(a) Population - A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.

(b) School Facilities and Transportation - An analysis of public school capacity and transportation considerations associated with future development.

(c) Economic Development - An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.

(d) Land Use - An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

(e) Natural Resource - An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines.

(f) Hazardous Areas - An analysis of known hazards as may result from susceptibility to surface ruptures from faulting, ground shaking, ground failure, landslides or mudslides; avalanche hazards resulting from development in the known or probable path of snowslides and avalanches, and floodplain hazards.

(g) Public Services, Facilities, and Utilities - An analysis showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations and fire fighting equipment, health and welfare facilities, libraries, solid waste disposal sites, schools, public safety facilities and related services. The plan may also show locations of civic centers and public buildings.

(h) Transportation - An analysis showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on building line setbacks, control of access, street naming and numbering, and a proposed system of public or other transit lines and related facilities including rights-of-way, terminals, viaducts and grade separations. The component may also include port, harbor, aviation, and other related transportation facilities.

(i) Recreation - An analysis showing a system of recreation areas, including parks, parkways, trailways, river bank greenbelts, beaches, playgrounds, and other recreation areas and programs.

(j) Special Areas or Sites - An analysis of areas, sites, or structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.

(k) Housing - An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, sanitary, and adequate housing, including the provision for low-cost conventional housing, manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient to maintain a competitive market for each of those housing types, including provision for the siting of manufactured homes on individual lots in single-family residential areas or in mobile home parks, as appropriate to address the needs of the community.

(l) Community Design - An analysis of needs for governing landscaping, building design, tree planting, signs, and suggested patterns and standards for community design, development, and beautification.

(m) Implementation - An analysis to determine actions, programs budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan.

Nothing herein shall preclude the consideration of additional planning components or subject matter. (1994)

Section 67-6508 - Comments

Conduct comprehensive planning process evaluating trends, conditions, goals, etc. - must analyze following components - or explain why not:

a. Population: the makeup - trends

b. School facilities and transportation

c. Economic development

d. Land use: map of suitable uses

e. Natural resources

f. Hazardous areas

g. Public services, facilities and utilities

h. Transportation

i. Recreation

j. Special areas or sites

k. Housing (including siting of mobile homes: added 1994)

l. Community Design

m. Implementation

Additional components are not precluded.

PRACTICAL POINTERS:

The planning duties spelled out in this statute are extensive and cover most aspects of a community's development and undeveloped conditions. They may seem somewhat exhaustive for a small community where change is slight and the need for thorough analysis for some components seems less than beneficial. To accommodate that, the statute provides that various sections of the Plan listed in this section of the Code may be omitted solely upon an explanation of why they are not needed. As a general rule, a court will not look behind the determination made by the Commission or the governing Board that a section of a Plan is not needed. Only the most peculiar reason would likely be rejected.

The sections addressed in this code section need not be answered by development of original information. Reliance upon sources of information from other providers is certainly suitable and may be more desirable in terms of saving costs to the governing body. Information about population can be obtained from the Idaho Department of Commerce, from the Bonneville Power Administration, and from utilities serving the area. School facilities can be addressed by the local school districts who most likely have a needs assessment and information about school buildings. Economic development may be a matter that is handled by a regional development corporation or council of governments. Solicitation of information from those sources should be encouraged to avoid the unnecessary cost of inventing the wheel in each community.

The land use section specifically requires a land use map, but it need not be very detailed. A map setting forth general land use types should be sufficient. Natural resource information can come from State and Federal agencies, as might information about hazardous areas. Public service facilities and utilities information could likely be the general province of the local government itself. Transportation could be addressed by both highway officials at the State and local level. Particular care must be taken to see that the interests of other highway service providers are addressed as a comprehensive planning process is carried out, particularly if the jurisdiction itself does not have highway responsibilities. Recreation needs and plans can be generated by citizen input and by public agency officials with expertise in such matters. Special areas are a subject for general community input. Housing information is available both from the Idaho Housing Agency and potentially from local community or economic development groups. Providing for siting of manufactured housing on individual lots or mobile home parks was added in 1994. The community design element can be addressed by citizen comment or it can be eliminated if new development is not a major issue in the community.

Implementation is the keystone of any comprehensive planning activity and deserves the most attention as it outlines the methods which could be employed to carry out the goals set in establishing the remainder of the plan. Implementation is often accomplished by way of enactment of local ordinances, such as zoning and subdivision ordinances, or by budgetary policy on an annual and multiyear basis. It is important to recognize that implementation is probably better stated as a matter of various priorities rather than establishing specific due dates for specific tasks. The presence of those specific dates could be a source of conflict and a future challenge if planning activities are not completed on schedule.

PROCEDURAL REQUIREMENTS FOR COMPREHENSIVE PLANNING

67-6509. Recommendation and adoption, amendment, and repeal of the plan.

(a) The planning or planning and zoning commission, prior to recommending the plan, amendment, or repeal of the plan to the governing board, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice of intent to adopt, repeal or amend the plan shall be sent to all political subdivisions providing services within the planning jurisdiction, including school districts, at least fifteen (15) days prior to the public

hearing scheduled by the commission. Following the commission hearing, if the commission makes a material change in the plan, further notice and hearing shall be provided before the commission forwards the plan with its recommendation to the governing board. A record of the hearings, findings made, and actions taken shall be maintained.

(b) The governing board, prior to adoption, amendment, or repeal of the plan, shall conduct at least one (1) public hearing using the same notice and hearing procedures as the commission. The governing board shall not hold a public hearing, give notice or a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission. Following the hearing of the governing board, if the governing board makes a material change in the plan, further notice and hearing shall be provided before the governing board adopts the plan.

(c) No plan shall be effective unless adopted by resolution or ordinance by the governing board. An ordinance enacting a plan or part of a plan may be adopted, amended, or repealed by reference as provided for in sections 31-715 and 50-901, Idaho Code, three (3) copies of which shall be on file with the city clerk or county clerk.

(d) Any person may petition the commission or, in absence of a commission, the governing board, for a plan amendment at any time. The commission may recommend amendments to the plan to the governing board not more frequently then every six (6) months to correct errors in the original plan or to recognize substantial changes in the actual conditions in the area. The commission may recommend amendments to other ordinances authorized by this chapter to the governing board at any time. (1992)

Section 67-6509 - Comments

a. Public hearing required to change plan - two hearings, publication and notice to all political subdivisions providing services.

b. Material change requires second hearing.

c. Plan must be adopted by ordinance or resolution, must be changed likewise.

d. Anyone can request change, change no more often than once every six months.

PRACTICAL POINTERS:

This section is the vital procedural section which is referred to in a number of subsequent sections which address the process by which Comprehensive Plans are adopted, amended, modified or repealed. The procedures for adoption of a Comprehensive Plan call for two public hearings if there is a separate planning and zoning commissions and governing board. Notice of public hearing must be given to the general public, both via published notice in the legal sections of the newspaper and by notice to other media in order that they might cover the matter as a news story. Each jurisdiction's official newspaper is to be the official source of information about changes to or adoption of a Comprehensive Plan.

In addition to general public notice, the statute now requires that specific notice be provided to all political subdivisions providing services within the planning jurisdiction, particularly including school districts. After a public hearing, if a material change is made to

the Plan, a second public hearing must be held before the body making that change. A material change is a term which refers to a change that is substantial which has a significance that passes the test of not being trivial. There is no single simple way to identify what changes are "material". If in doubt, hold a second public hearing to remove that point as a possible point of challenge. The law requires that a full record of the actions of the planning commission be maintained along with a transcribable verbatim record of the hearing proceeding. That record is required in order that a transcript may be made in the event of a court challenge. Such recordings must be kept for at least six months after final action is taken on the matter in question. This time frame can be quite substantial in the event of a comprehensive plan where the process may take two years or more to run its full course.

After receiving a recommendation from the planning commission, the governing board must hold its own public hearing. That hearing is a de novo public hearing, at which any comments which were made at the prior public hearing can be repeated in addition to any new testimony. The statute expressly prohibits the governing board from advertising for a public hearing until it has received a recommendation from the planning commission. This section should not be ignored in the course of attempting to make changes to the comprehensive plan or other ordinances when there are pressures to do so in a hurry. It may be prudent to have local ordinances place a time limit upon the ability of the planning commission to withhold a recommendation or to have an automatic transfer jurisdiction a certain number of days after the governing board asks for a response from the planning commission.

The plan will be effective only upon its adoption as an ordinance or resolution of the governing board. In most instances, the resolution method of adoption is preferred over the ordinance method. Amendments to resolutions can be accomplished by a new resolution, whereas an amendment to an ordinance requires passage of a new ordinance, which requires publication of either an extensive summary of that ordinance or of the ordinance in its entirety. In the matter of cost containment, the resolution method is frequently preferred.

Any person is allowed to request a change in the comprehensive plan, but the planning commission is limited to recommending changes to the governing board no more frequently than every six months. Additionally, the statute provides that those changes to be recommended should be solely to correct errors in the original plan or to recognize substantial changes in the actual conditions in the area. This is often a stumbling block and has not been judicially interpreted. A number of practitioners in the State believe that changes can also be made because of changes in the political makeup determined by elections held within the

jurisdiction. Often policy choices are advocated by successful candidates who then wish to carry out their electoral mandate by making changes to the comprehensive plan or related ordinances. Until the court determines that is acceptable, the statute may make such changes subject to additional rationalization in order to sustain them.

MANUFACTURED HOMES - ALLOWED IN RESIDENTIAL AREAS

67-6509A. Siting of manufactured homes in residential areas - Plan to be amended.

(1) On or before July 1, 1996, by ordinance adopted, amended or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, each governing board shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in section 39-4105(14), Idaho Code.

(2) Manufactured homes on individual lots zoned for single-family residential uses as provided in subsection (1) of this section shall be in addition to manufactured homes on lots within designated mobile home parks or manufactured home subdivisions.

(3) This section shall not be construed as abrogating a recorded restrictive covenant.

(4) A governing board may adopt any or all of the following placement standards, or any less restrictive standards, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than one thousand (1,000) square feet;

(b) The manufactured home shall be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade;

(c) The manufactured home shall have a pitched roof, except that no standards shall require a slope of greater than a nominal three (3) feet in height for each twelve (12) feet in width;

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority;

(e) The manufactured home shall have a garage or carport constructed of like materials. A governing board may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings;

(f) In addition to the provisions of paragraphs (a) through (e) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirements to which a conventional single-family residential dwelling on the same lot would be subjected.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, or discouraging needed housing through unreasonable cost or delay. (1994)

Section 67-6509A - Comments (New section adopted in 1994)

Requires that prior to July 1, 1996, comprehensive plans and land use ordinances must be amended to provide for siting of manufactured homes as defined in IC 39-4105 within all single-family residential zones. IC 39-4105 requires that such homes meet HUD/FHA standards. Restrictive covenants applicable to mobile or manufactured homes would still be effective. Placement standards which may be adopted by governing boards are also set forth.

The most restrictive local standards allowed are:

(a) multi-sectional home of at least 1000 square feet;
(b) excavated and backfilled perimeter, no more than 12" above grade;
(c) pitched roof can be required, but no more than 3 in 12;
(d) can require siding and roofing for site-built appearance;
(e) garage or carport can be required -- of like materials.

Any architectural, development, or minimum size standard which is applied to other housing within the zone may also be applied to the manufactured homes.

PRACTICAL POINTERS:

Any changes in ordinances must establish objective standards. No jurisdiction should contemplate zoning restrictions which provide a substantial amount of discretion for the decision maker. This should be well-publicized before you start to move on implementation. The legislature may change its mind before this law takes effect. This section will make it exceedingly difficult to enforce historical preservation regulations in applicable residential neighborhoods.

PRIOR COMPREHENSIVE PLANS VALID

67-6510. Existing comprehensive plans.

A governing board using any plan in existence on the effective date of this chapter shall conduct a review of that plan and shall make necessary amendments in accordance with this chapter prior to January 1, 1977, providing for recommendation, notice and hearing pursuant to section 67-6509, Idaho Code. (1975)

Section 67-6510 - Comments

PRACTICAL POINTERS:

Comprehensive plans which were in effect when the Local Planning Act was passed in 1975 were given until January 1, 1977 to be reviewed and updated. If those

changes were not accomplished in that time frame, a pre-existing comprehensive plan may be subject to collateral challenge for failure to address these matters.

ZONING ORDINANCE REQUIRED - PROCEDURES

67-6511. Zoning ordinance.

Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the adopted plan.

Within a zoning district, the governing board shall where appropriate, establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction.

(b) If the request is in accordance with the adopted plan, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject the ordinance amendment under the notice and hearing procedures provided in section 67-6509, Idaho Code, provided that in the case of a zoning district boundary change, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice.

(c) If the request is not in accordance with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public service, including school districts, within the planning jurisdiction, the request shall be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board, which shall recommend and the governing board may adopt or reject an amendment to the plan under the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be amended as provided for under section 67-6511(b), Idaho Code.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section. (1992)

Section 67-6511 - Comments

a. Zoning ordinances amended by procedures for comprehensive plan - two hearings, give consideration to effects on service delivery by any political subdivision, including schools.

b. Must comply with plan.

c. Must be amended by ordinance, must evaluate effects on service delivery.

d. Mailed and posted notice required.

e. Where more than 200 property owners would receive notice, local government should adopt alternative method of providing notice.

f. May amend plan before change is to be made to ordinance.

g. If change is granted, can't change again for four years without consent of applicant.

PRACTICAL POINTERS:

The procedures for adopting zoning ordinance amendments are very similar to those required for changes or adoption to the Comprehensive Plan. A jurisdiction need only adopt an ordinance which contains one or more zones, and those zones must be "in accordance with" the Comprehensive Plan. Courts have interpreted this to mean that the zoning ordinance must bear a rational relationship to what the Comprehensive Plan sets as goals. If the Comprehensive Plan establishes that a certain area will someday properly foster specific land uses, the Zoning Ordinance need not allow that land use at the present time. Only when the conditions appropriate to the establishment of the designated land use have been achieved, must the Zoning Ordinance match the Comprehensive Plan designation.

Zone change requests must also be advertised as required by 67-6509. Because zoning requests are specific to a particular site, unlike a number of Comprehensive Plan changes, additional notice must be provided by first class mail to all property owners, or purchasers of record, of land within 300 feet of the external boundaries of the land in question and to those who own the subject land itself. The Commission may also require notice to other affected land owners. Notice must also be posted on the premises at least one week prior to the hearing and local ordinances should provide for a special process of notification when more than 200 property owners must be notified. This alternative method could rely upon other media or additional postings, etc. In any event, that specific method must be set out in ordinance in order to be valid. Requests that are not in accordance with the Comprehensive Plan or which would result in demonstrable adverse impacts upon the delivery of services by

any political subdivision should be rejected. The possibility of an amendment of the Comprehensive Plan is presented as a basis for subsequently approving such amendments.

If a zone change is granted at the request of a property owner, it cannot be changed for a period of four years from the date of that approval. The only exception to this principle is when the property owner requests or agrees that a change of zoning be authorized.

DEVELOPMENT AGREEMENTS - PROCEDURES

67-6511A. Development agreements.

Each governing board may, by ordinance adopted or amended in accordance with the notice and hearing provisions provided under section 67-6509, Idaho Code, require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel. The governing board shall adopt rules governing the creation, form, recording, modification, enforcement and termination of commitments. Commitments shall be recorded in the office of the county recorder and shall take effect upon the adoption of the amendment to the zoning ordinance. Unless modified or terminated by the governing board, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment. A commitment may be modified only by the permission of the governing board after complying with the notice and hearing provisions of section 67-6509, Idaho Code. A commitment may be terminated, and the zoning designation upon which the use is based reversed, upon the failure of the requirements in the commitment after a reasonable time as determined by the governing board or upon the failure of the owner; each subsequent owner or each other person acquiring an interest in the parcel to comply with the conditions in the commitment and after complying with the notice and hearing provisions of section 67-6509, Idaho Code. By permitting or requiring commitments by ordinance the governing board does not obligate itself to recommend or adopt the proposed zoning ordinance. A written commitment shall be deemed written consent to rezone upon the failure of conditions imposed by the commitment in accordance with the provisions of this section. (1991)

Section 67-6511A - Comments

a. Local ordinance may authorize specific conditions of development or uses in rezonings.

b. Ordinance must be adopted only after notice and hearing.

c. Must adopt rules concerning such commitments.

d. Commitments must be recorded in county recorder's office. Commitment not binding unless subsequent owner has notice?

e. Modification of conditions or termination of commitment requires notice and hearing.

f. Commitment is considered permission to rezone upon failure to meet conditions.

PRACTICAL POINTERS:

The use of Development Agreements is a staff intensive way to refine zoning controls one step beyond what may be the case in conditional or special use permits. Development Agreements provide an avenue to get specific performance limitations built into the requirements for individual developments.

One of the most significant limitations of Development Agreements is the effect of change upon any such agreement format. Over time, the details of Agreements may well be forgotten or the personnel who entered into them may change such that their existence in itself is not a known commodity.

Because the Development Agreement process is so staff intensive, it is not the prescription for everyone. Small jurisdictions should certainly think twice before contemplating embarking upon the written agreement approach to development regulation. The administration of such agreements over time as land uses change and the needs of owners change could prove a difficult and involved task for a jurisdiction to administer.

SPECIAL USE PERMITS - PROCEDURES

67-6512. Special use permits, conditions, and procedures.

(a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is otherwise prohibited by the terms of the ordinance, but may be allowed with conditions under specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

(1) Minimizing adverse impact on other development;

(2) Controlling the sequence and timing of development;

(3) Controlling the duration of development;

(4) Assuring that development is maintained properly;
(5) Designating the exact location and nature of development;
(6) Requiring the provision for on-site or off-site public facilities or services;
(7) Requiring more restrictive standards than those generally required in an ordinance;
(8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.
(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit in not transferable from one parcel of land to another. (1992)

Section 67-6512 - Comments

a. Uses allowable with conditions and subject to ability of political subdivisions to provide services.

b. One hearing required - notice published, posted and mailed to property owners within 300 feet of the site.

c. Outline of conditions that may be attached to special use permit: Can be tied to ability of political subdivisions to provide services. Sequence, timing, duration, maintenance; can require site-specific conditions.

d. May require that studies be conducted.

e. Transferable from owner, but not from parcel.

PRACTICAL POINTERS:

The Special Use Permit procedure allows a zoning ordinance to address uses which are conditionally acceptable in the midst of a land use zone. The special use procedure allows the application of special conditions to development of uses which would allow them to integrate suitably with their surroundings. By including the conditions which are susceptible to special use approval, a permit applicant is put on notice of what design features should be considered and might be applied as conditions. The types of conditions which might be allowed should be spelled out in the local ordinance and might include such things as:

A. additional setbacks,
B. restrictions on lighting,
C. landscaping requirements,
D. limits on building height or placement,
E. design considerations,
F. location of on-site improvements,
G. construction of off-site improvements,
H. orientation of building and windows.

Public hearing notice requirements call for one public hearing with the authority to make a decision resting either with the Planning and Zoning Commission or with a recommendation coming from the Planning Commission to be forwarded to the Governing Board. The hearing examiner also has authority to consider special use permits.

It may be appropriate to require applicants for a special use permit to conduct special studies and to provide additional analysis beyond that normally required of a permit applicant before special use permit application can be favorably considered. Special use permits do not create binding precedent and are very site specific in that certain uses can be integrated suitably into certain sites better than others. Accordingly, special use permits are not transferable from one site to another, but generally continue from one owner to another. Questions arise if the use permit, once granted, is not implemented within a certain time frame. Consideration of this issue should be addressed in local ordinance.

SUBDIVISION ORDINANCES AUTHORIZED

67-6513. Subdivision ordinance.

Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. (1992)

Section 67-6513 - Comments

a. Adoption of subdivision ordinance requires hearings.

b. Ordinance does not need to require hearings for individual subdivisions. (but see below)

c. Ordinance can provide for mitigation of effects of subdivision.

PRACTICAL POINTERS:

The subdivision ordinance authority granted by this section deals with the improvement or development of subdivisions, not with the platting of subdivisions per se. Platting requirements are found in Idaho Code Title 50, Chapter 13. Subdivision ordinances must be adopted or amended in accordance with the two-hearing procedure found in 67-6509.

The Idaho Supreme Court has determined that consideration of individual subdivision permits is a quasi-judicial act by both the Planning Commission and the Governing

Board. Accordingly, the procedural requirements for hearings which are to be followed in zoning matters should be followed with respect to proposed subdivisions.

The subdivision improvement standards should be integrated completely with the platting process spelled out in Title 50 Chapter 13. Platting is a technical function involving uniform land description and provision of standardized rights of way and easements which will rely upon the efforts of a licensed land surveyor. Those platting processes do not generally address the broader public service and planning concerns that a subdivision ordinance-based review would require. Most subdivision improvement work requires that a professional engineer have ultimate responsibility for the engineering work accompanying the planning and implementation of subdivision improvements.

This Code section contains a most important provision which allows local governments to require the mitigation of effects of new development via provisions in their subdivision ordinances. Some believe this is authorization to establish impact fees and other mitigative measures which serve a critical planning function. Consideration of these matters of mitigation would recommend consultation with political subdivisions, including school districts, which might be called upon to deliver services to the proposed new developments. The statute authorizes protection of the interests of current residents and the quality of services they now receive in addition to establishing limitations on additional costs engendered by accommodation of proposed subdivisions. This section should not be overlooked in the overall scheme of land use regulations adopted by each community. It may provide a vital tool to address community development needs.

Special attention should be paid to the technical requirements of the platting statutes. There may be a tendency to confuse the threshold levels established for platting purposes with the threshold levels required for subdivision improvements. Certain lands may require platting under state law, but local governments may make the choice not to require improvement of the rights of way or other facilities dictated by such a subdivision. Those involved critical planning choices which depend both upon state law with respect to platting and local ordinance with respect to improvement standards.

PRE-1975 ORDINANCES APPROVED

67-6514. Existing zoning or subdivision ordinances.

A governing board, using any zoning or subdivision ordinance is existence on the effective date of this chapter, shall conduct a review of those ordinances and shall make

necessary amendments in accordance with this chapter prior to January 1, 1978, following notice and hearing pursuant to section 67-6509, Idaho Code. (1975)

Section 67-6514 - Comments

PRACTICAL POINTERS:

Existing ordinances were required to be reviewed and updated, if necessary, by January 1, 1978.

PLANNED UNIT DEVELOPMENTS - PROCEDURES

67-6515. Planned unit developments.

As part of or separate from the zoning ordinance, each governing board may provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for planned unit development permits.

A planned unit development may be defined in a local as an area of land in which a variety of residential, commercial, industrial, and other land uses are provided for under single ownership or control. Planned unit development ordinances may include, but are not limited to, requirements for minimum area, permitted uses, ownership, common open space, utilities, density, arrangements of land uses on a site, and permit processing. Planned until developments may be permitted under processing for special use permits as defined in this chapter. Permits for planned unit developments may be granted following the notice and hearing procedures provided in section 67-6512, Idaho Code. (1975)

Section 67-6515 - Comments

a. Planned unit development ordinances require two hearings for adoption.

b. Ordinance can allow mixing uses and use of common open space.

c. Must follow procedures for special use permit - at least one hearing.

PRACTICAL POINTERS:

The planned unit development process is an attempt to allow the "cookie cutter" restrictions of zoning to be overcome by integrated planning for a large site where specialized zoning requirements can be relaxed. The tradeoff for this is increased discretion to consider design approaches taken. Planned unit development uses should not vary significantly from the underlying zoning, and planned unit development should generally be considered in the manner of an overlay on the existing zone. It should not be treated as a license to ignore zoning regulations which are otherwise in place.

The procedural requirements for PUD are the same as for special use permits, in that only one public hearing is required. The theory underlying this procedural requirement is

that the zoning upon which the PUD is overlaid has already been determined and therefore only one public hearing is needed.

One of the difficulties associated with planned unit developments is the nature of development in the State of Idaho and the magnitude of some proposals which are submitted as planned unit developments. When a first phase of a project is submitted and is built, it carries with it certain implications for the development of the remainder of the property held by the same owner. Quite often secondary or tertiary phases of the development are ready for implementation when the economy has shifted. Changes can be proposed which arouse the concerns of those who bought in the first phase, asserting that they are depending upon completion of the project. Local ordinances should address this possibility of change in a way that keeps the local government out of the business of being the guarantor of such improvements. Planned unit developments carry with them a substantial administrative obligation which should be considered before the planned unit development process is placed in the local ordinance.

VARIANCES - PROCEDURES

67-6516. Variance - Definition - Application - Notice - Hearing.

Each governing board shall provide as part of the zoning ordinance for the processing of applications for variance permits. A variance is a modification of the requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration. (1975)

Section 67-6516 - Comments

a. Provision for processing must be made in zoning ordinance.

b. Deals only with bulk regulations - not uses.

c. To be granted only upon showing of undue hardship because of characteristics of the site - Must not conflict with public interest.

d. Notice and opportunity to be heard to adjoining owners.

PRACTICAL POINTERS:

The variance is a mechanism which serves as a safety valve to provide potential relief from impractical and purposeless application of building bulk and placement requirements. Variances do not involve land use; repeat, they do not involve land use. Variances require an applicant to make a showing of two particular aspects of his proposal. One facet is that the variance requested must be the result of a unique site characteristic. Court decisions have generally determined that this unique site characteristic must be one which is natural, rather than man-made or induced by an owner. Configuration of lot boundaries, locations of existing buildings, etc. are seldom considered unique site characteristics.

Second, if unique site characteristics exist, the relief granted must not be contrary to the public interest. It is not enough that the relief granted simply would not be contrary to the public interest. Such a condition must be preceded by finding that there are unique site characteristics. Both of these conditions should be present before a variance is favorably considered. Variance applications which do not include unique site characteristics should be discouraged because they simply do not legally qualify for the relief intended by the statute.

Notice requirements for variance applications are less stringent than for conditional uses. Notice need not be published in the newspaper, but must be provided only to owners of property which adjoin a building site. Decisions can be made either by the Planning Commission or by recommendation of the Planning Commission to the Governing Board.

FUTURE ACQUISITIONS MAP

67-6517. Future acquisitions map.

Upon the recommendation of the planning or planning and zoning commission each governing board may adopt, amend, or repeal a future acquisitions map in accordance with the notice and hearing procedures provided in section 67- 6509, Idaho Code. The map shall designate land proposed for acquisition by a public agency for a maximum twenty (20) year period. Lands designated for acquisition may include land for:

(a) Streets, roads, other public ways, or transportation facilities proposed for construction or alteration;

(b) Proposed schools, airports, or other public buildings;

(c) Proposed parks or other open spaces; or

(d) Lands for other public purposes.

Upon receipt of a request for a permit as defined in this chapter, or a building permit as defined in a local ordinance, for a development on any lands designated upon the future acquisitions map, the zoning or planning and zoning commission or the governing board shall notify the public agency proposing to acquire the land. Within thirty (30) days of the date of that

notice, the public agency may, in writing, request the commission or governing board to suspend consideration of the permit for sixty (60) days from the date of the request to allow the public agency to negotiate with the land owner to obtain an option to purchase the land, acquire the land, or institute condemnation proceedings as may be authorized in the Idaho Code. If the public agency fails to do so within the sixty (60) days, the commission or governing board shall resume consideration of the permit. Nothing in this chapter shall limit a governing board from adopting local ordinances as required or authorized which include lands on the future acquisitions map. (1994)

Section 67-6517 - Comments

a. Allows designation of lands to be acquired for public purpose.

b. Provides for stay during permitting to allow local government to acquire land designated on map.

PRACTICAL POINTERS:

Future acquisitions map process was one which was intended to allow public entities to preserve rights of way and important future public sites before land developments usurp their place in the community. As a practical matter, the budgetary realities of life for Idaho's communities does not allow its full implementation. The maximum time period for which development can be held up is six months while budgets must be adopted on an annual cycle. Additionally, many local governments in Idaho require far more than one year to pay for significant capital improvements in their communities. This section was amended in 1994 to provide that the period of proposed acquisition be 20 years; it was six years in the old version. Though well intentioned, this section has not been an effective tool in practice.

DEVELOPMENT STANDARDS AUTHORIZED

67-6518. Standards.

Each governing board may adopt standards for such things as: building design; blocks, lots, and tracts of land; yards, courts, greenbelts, planting strips, parks, and other open spaces; trees; signs; parking spaces; roadways, streets, lanes, bicycleways, pedestrian walkways, rights-of-way, grades, alignments, and intersections; lighting; easements for public utilities; access to streams, lakes, and viewpoints; water systems; sewer systems; storm drainage systems; street numbers and names; house numbers; schools, hospitals, and other public and private development.

Standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code.

Whenever the ordinances made under this chapter impose higher standards than are required by any other statute or local ordinance, the provisions of ordinances made pursuant to this chapter shall govern. (1975)

Section 67-6518 - Comments

a. Allows a variety of standards regarding land use and development to be adopted by ordinance.

b. Strictest standards prevail.

PRACTICAL POINTERS:

The ability to adopt standards is a critical one and enforceable standards should be part of every land use ordinance. They may be expressed in terms of building bulk and placement standards in a zoning ordinance or by subdivision improvement standards contained in subdivision ordinances. This code section expressly allows local ordinances to exceed the requirements of State or other statutes.

PERMIT PROCESS

67-6519. Permit granting process.

As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for permits for which a reasonable fee may be charged. Each application for a permit required or authorized under this chapter shall first be submitted to the zoning or planning and zoning commission for its recommendation or decision. The commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the permit or makes its recommendation to the governing board. Each commission or governing board shall establish by rule a time period within which a recommendation or decision must be made. Whenever a governing board or zoning or planning and zoning commission grants or denies a permit, it shall specify:

(a) the ordinance and standards used in evaluating the application;

(b) the reasons for approval or denial; and

(c) the actions, if any, that the applicant could take to obtain a permit.

An applicant denied a permit or aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code. (1993)

Section 67-6519 - Comments

a. Provides for permit review by planning and zoning commission.

b. Permit approval or denial requires statement of: ordinance and standards relied upon, reasons for action, and actions applicant could take to obtain permit.

c. Affected party may appeal decision to district court within 28 days (reduced from 60 days by 1993 legislation).

PRACTICAL POINTERS:

This statute requires local ordinances to enact a permit processing schedule which comports with permit processing. The statute requires that actions taken by local governments with respect to permits authorized or required under the local planning act must be documented and the reasons and statutes relied upon must be set forth. Included in the responsibilities of local government are an obligation to notify the permit applicant of what actions, if any, he may take to obtain a permit. While there has been no judicial determination of this matter, most attorneys consider that to simply require the local government to point to the ordinance provisions which directly must be complied with, rather than requiring the local government to redesign an applicant's project.

The completion of all the steps called for in 67-6519 trigger the ability of a permit applicant to appeal the decision to the District Court for judicial review pursuant to standards set by the Administrative Procedures Act. That appeal can be brought at any point within sixty days after the final decision by the local government, so long as all local remedies have been exhausted. Provisions of the Administrative Procedures Act changed effective July 1, 1993.

HEARING EXAMINERS AUTHORIZED

67-6520. Hearing examiners.

Hearing examiners include professionally trained or licensed staff planners, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivision, special use and variance permits and requests for zoning district boundary changes which are in accordance with the plan. Notice, hearing, and records before the examiner shall be as provided in this chapter for the zoning or planning and zoning commission. Whenever a hearing examiner hears an application, he shall recommend to the governing board or zoning or planning and zoning commission that the application be granted or denied and shall specify:

(a) the ordinance and standards used in evaluating the application;

(b) the reasons for recommendation; and

(c) the actions, if any, that the applicant could take to obtain a permit or zoning district boundary change in accordance with the plan.

An applicant denied a permit or aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review as provided by chapter 52, title 67, Idaho Code. (1993)

Section 67-6520 - Comments

a. Authorizing Ordinance needed.

b. Must be a professional.

c. Must follow same procedures as PZ Commission.

d. Only has power of recommendation regarding subdivisions, variances, special use permits, and changes of zoning district boundaries.

e. 28 days to appeal decision to district court (reduced from 60 days by 1993 legislation).

PRACTICAL POINTERS:

The use of the Hearing Examiner may be a practical step in larger jurisdictions, or those which are undergoing great amounts land use change, to handle the inevitable flood of applications for changes in zoning or conditional use permits. The Hearing Examiner stands in place of the Planning Commission to conduct public hearings and forward recommendations either to the Planning Commission or the Governing Board for final action. The standards for Hearing Examiner conduct are very similar to those of the requirements for Planning Commission activity. The Hearing Examiner process may lead to more thoroughly reasoned decisions as the Hearing Examiner has time to develop the reasons for a decision. Some people resist use of the Hearing Examiner on the grounds that it is "undemocratic", but we should realize that the entire hearing process is "undemocratic" because it has been determined to be quasi judicial in nature, with decisions to be based solely upon the facts in the record and application of the law.

APPEALS - PROCEDURE

67-6521. Actions by affected persons.

(a) As used herein, an affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development.

(b) Any affected person may at any time prior to final action on a permit required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section 67-6512, Idaho Code; provided, however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

(1) Grant or deny a permit; or

(2) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by rule and regulation a time period within which a recommendation or decision must be made.

(d) An affected person aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title 67, Idaho Code. (1993)

Section 67-6521 - Comments

a. Allows one with interest in real property affected by decision to request a hearing if one has not been held.

b. Petition must be filed in writing.

c. Commission may consider issuance of the permit.

d. Aggrieved party has 28 days to appeal decision to district court (reduced from 60 days by 1993 legislation).

PRACTICAL POINTERS:

One important facet of this section is that it identifies the persons who can bring appeals pursuant to the Local Planning Act. In order to do so, one must be an affected person in that he/she has an interest in real property which may be adversely affected by issuance or denial of a permit. This section also authorizes the local governing board to hold a public hearing where one would not otherwise be required if anyone requests it, and it requires a public hearing, even though not otherwise necessary, if a petition signed by 20 or more people requests it. The status of appeals is once again governed by the Administrative Procedures Act, which was amended effective July 1, 1993.

AUTHORITY TO COMBINE PERMITS

67-6522. Combining of permits - Permits to assessor.

Where practical, the governing board or zoning or planning and zoning commission may combine related permits for the convenience of applicants. State and federal agencies should make every effort to combine or coordinate related permits with the local governing board or commission. Appropriate permits as defined by local ordinance shall be forwarded to the county assessor. (1975)

Section 67-6522 - Comments

PRACTICAL POINTERS:

This section authorizes one-stop permitting which can make the permit process easier for landowners and less complex for the permit issuing agency. Use of this section can provide benefits to the governing body by simplifying the entire permit issuing process.

EMERGENCY ORDINANCES AND MORATORIUMS

67-6523. Emergency ordinances and moratoriums.

If a governing board finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances as required or authorized under this chapter, or adoption of a moratorium upon the issuance of selected classes of permits, or both, it shall state in writing its reasons for that finding. The governing board may then proceed without recommendation of a commission, upon any abbreviated notice of hearing that it finds practical, to adopt the ordinance or moratorium. An emergency ordinance or moratorium may be effective for a period of not longer than one hundred and twenty (120) days. (1975)

Section 67-6523 - Comments

a. Requires finding of imminent peril to health, safety, or welfare.

b. No recommendation from commission required.

c. Can abbreviate hearing requirements as necessary.

d. Maximum effective period is 120 days.

PRACTICAL POINTERS:

This procedure allows the adoption of land use ordinances without compliance with specific hearing requirements, valid for a period of up to one hundred twenty days, as long as the governing board can make a finding that there is an immediate peril to health, safety and welfare. This provision is intended to deal with the immediate health issues associated with land use concerns. It is not intended as a substitute for the deliberative process.

INTERIM ORDINANCES AND MORATORIUMS

67-6524. Interim ordinances and moratoriums.

If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt interim ordinances as required or authorized under this chapter, following the notice and hearing procedures provided in section 67-6509, Idaho Code. The governing board may also adopt an interim moratorium upon the issuance of selected classes of permits if, in addition to the foregoing, the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time when it shall be in full force and effect. (1975)

Section 67-6524 - Comments

a. Change must be pending.

b. Must follow notice procedures.

c. Must state definite time it will be effective.

PRACTICAL POINTERS:

Interim ordinances are those which are intended to serve as a bridge while a new Comprehensive Plan is being implemented through new ordinance. The regular two-step hearing process must be followed, but the necessary dependency of the ordinance upon the adopted plan is not as stringently required. Interim ordinances must have a sunset date stated within the body of the text. These ordinances are less susceptible to challenge for inconsistency with the Comprehensive Plan during the short duration of their effectiveness.

ORDINANCE CHANGES UPON ANNEXATION

67-6525. Plan and zoning ordinance changes upon annexation of unincorporated area.

Prior to annexation of an unincorporated area, a city council shall request and receive a recommendation from the planning and zoning commission, or the planning commission and the zoning commission, on the proposed plan and zoning ordinance changes for the unincorporated area. Each commission and the city council shall follow the notice and hearing procedures provided in section 67-6509, Idaho Code. Concurrently or immediately following the adoption of an ordinance of annexation, the city council shall amend the plan and zoning ordinance. (1975)

Section 67-6525 - Comments

a. Provides for cities to take jurisdiction of zoning in annexed territory.

b. City must follow hearing procedures.

PRACTICAL POINTERS:

Public hearings held at the annexation phase for cities are really public hearings to determine the appropriate zoning. The statute provides that zoning of property must occur upon annexation or immediately following the adoption of an ordinance of annexation. Care should be taken to see that both the Plan and the ordinance encompass the new lands considered for annexation. The Idaho Supreme Court has determined that the zoning of lands upon annexation is a legislative rather than quasi judicial act. This decision may not be entirely consistent with the Court's determination in Cooper v. Ada County, and subsequent case law, which made site-specific zoning determinations quasi judicial in nature.

AREA OF CITY IMPACT

67-6526. Areas of city impact - Negotiation procedure.

(a) The governing board of each county and city therein shall, prior to October 1, 1994, adopt by ordinance following the notice and hearing procedures provided in section 67-6509, Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. By mutual agreement, this date may be extended to November 1, 1994. A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted no later than January 1, 1995. This separate ordinance shall provide for one of the following:

(1) Application of the city plan and ordinances adopted under this chapter to the area of city impact; or

(2) Application of the county plan and ordinances adopted under this chapter to the area of city impact; or

(3) Application of any mutually agreed upon plan and ordinances adopted under this chapter to the area of city impact.

Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.

(b) If the requirements of section 67-6526(a), Idaho Code, are not met, the county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county governing boards an area of city impact together with plan and ordinance requirements. The recommendations shall be acted upon by the governing boards within sixty (60) days of receipt. If the city or county fails to enact ordinances providing for an area of city impact, plan, and ordinance requirements, the city or county may seek a declaratory judgment from the district court identifying the area of city impact, and plan and ordinance requirements. In defining an area of city impact, the following factors shall be considered:

(1) trade area;

(2) geographic factors; and

(3) areas that can reasonable be expected to be annexed to the city in the future.

(c) If areas of city impact overlap, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners shall, upon a request from either city, within thirty (30) days, recommend adjustments to the areas of city impact which shall be adopted by ordinance by the cities following the notice and hearing procedures provided in section 67-6509, Idaho Code. If any city objects to the recommendation of the board of county commissioners, the county shall within sixty (60) days from the date of the recommendation conduct a special election and establish polling places for the purpose of submitting to the qualified electors residing in the overlapping impact area, the question of which area of city impact the electors wish to reside. The results of the election shall be conclusive and binding, and no further proceedings shall be entertained by the board of county commissioners, and the decision shall not be appealable by either city involved. The clerk of the board of county commissioners shall by abstract of the results of the election, certify that fact, record the same and transmit copies of the original abstract of the result of the special election to the clerk of the involved cities.

(d) Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. In the event the city and county cannot agree, the judicial review process of subsection (b) shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section.

(e) Prior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or